IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 8 OF 2004.

1. Smt. Indira Vinayak Sawant,
age 56 years, widow.

2. Mr. Pundalik Vinayak Sawant,
age 31 years, son;

3. Nuss Gunaparabha Vinayak Sawant,
age 26 years, son,

4. Mr. Rohan Vinayak Sawant,
age 20 years, son;

All r/o House No. 159, 'Potobab Niwas',
Rambhuvan, Ribandar, Ilhas, Goa. .... Petitioners.

Versus

1. Mr. Vijayendra Umakant Shety,
r/o House No. 115,
Akhada, St. Estevan (driver)

2. Mrs. Sitabai Dukle (expired)
represented by his legal heir:

2(a) Mr. Vassant Yeshwant Kamat,
major, r/o Sonarbhat, Betim,
Verem, Bardez, Goa.

3. The Oriental Insurance Co. Ltd.,
Govinda Building,
Panaji, Goa. .... Respondents.

Ms. Shreya Naik, Advocate for the Petitioners.

Mr. S.G. Bhobe, Advocate for the Respondent No.2(a).

CORAM: V. C. DAGA, J.

DATE: 23rd AUGUST, 2006.

ORAL JUDGMENT:

This petition is directed against the Order dated 25th February, 2003 passed in Claim Petition No.75/2001 rejecting application dated 31.10.2002 filed by the petitioner/claimant praying therein that Mr. Vasant Yeshwant Kamat, brother of the deceased be brought on record as legal representative of the deceased respondent No.2.

2. It appears from the material available on record that the respondent No.2 was made party to the Claim Petition being owner of the vehicle which was involved in the accident. She left for heavenly abode on 28.01.2000 much before filing of the Claim Petition. It is not in dispute that the respondent was married and had become widow within four years of her marriage and that she died issueless.

3. Mr. Vasant Yeshwant Kamat is the brother of the deceased respondent No.2. As such the said Vasant was sought to be impleaded as party defendant/respondent to the claim petition. The said application came to be rejected by the Tribunal by the impugned order holding that the said brother Mr. Vassant Kamat cannot be treated as a legal representative of the deceased respondent no.2.

4. Ms. Naik, learned counsel appearing for the petitioners submits

that the impugned order is erroneous and cannot stand to the scrutiny of law. She submits that the Tribunal has failed to take note of Article 1969 of the Portuguese Civil Code, which reads as under :-

> "(Order of legal succession)
>
> The legal succession shall devolve in the following order:
>
> 1) To the descendants;
> 2) To the ascendants, save what is provided in Article 1236;
> 3) To the brothers and their descendants;
> 4) To the surviving spouse;
> 5) To the collaterals not included in Clause 3 up to the sixth degree;
> 6) To the State, save what is provided in Article 1663.
>
> Sole paragraph:
>
> In the case of Clauses 1, 2 and 3 the commodities and fruits, gathered or pending, meant and necessary for the consumption of the couple, shall be deemed to be the own property of the surviving spouse, provided that at the date of the opening of the inheritance there is no pending or decreed suit for divorce, or for separation of the persons and properties."

5. She further submits that the Tribunal has further committed an error by another Order dated 27.11.03 in holding that the claim petition having abated against respondent No.2, the application filed under Section 140 of the Motor Vehicles Act cannot survive against the Insurance Company. She, thus, prayed for setting aside both orders and restoration of Claim Petition to the file of the Tribunal.

6. Mr. Bhobe, learned counsel appearing for the proposed respondent Mr. Vasant submits that he has not inherited any property of the deceased. He, therefore, submits that Mr. Vasant cannot be brought on record as a legal representative of his sister; deceased Smt. Sitabai. At the end of his submissions, he urged that if at all proposed respondent Vasant is to be brought on record as her legal representative, then the question about the extent of his liability be left open; because in his submission; Mr. Vasant did not inherit any of her properties. That in any event his liability cannot exceed more than the property inherited, if any.

7. Nobody is appearing for the Insurance Company inspite of service; as such I did not have advantage of hearing Insurance Company.

Consideration:

8. Having heard rival parties, in order to decide the controversy involved in this petition, it is necessary to turn to the definition of the words " legal representative ". The Motor Vehicles Act, has not defined the term "legal representative". However a "legal representative" ordinarily means a person who in law represents the estate of the deceased person or a person on whom the estate devolves on the death of an individual.

9. The definition of the term "legal representative" in Section 2(11) of the Code of Civil Procedure reads as under :-

> " Section 2(11):-
> "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued; "

10. Section 2(11) referred to above is inclusive in character and its scope is wide. It is not confined to legal heirs only. Instead it stipulates a person who may or may not be heir, competent to inherit the property of the deceased but he should represent the estate of the deceased person. It

includes heirs as well as persons who represent the estate even without title either as executor or as administrator in possession of the estate of the deceased. All such persons are covered by the expression “legal representatives”.

11. One who represents the estate of the deceased as also one who intermeddles with the estate of the deceased is a legal representative. The expression “ intermeddles “ with the estate of the deceased is a legal representative. The expression “ intermeddler “ is used to mean what is known as execution de son tort and a person cannot be an intermeddler unless he has an intention to represent the estate.

12. Having seen the aforesaid meaning of the word “legal representative”, it was necessary for the Tribunal to go into the question as to whether the deceased has left any property and/or is there any person representing the property of the deceased. Without going into this question, the Tribunal could not have decided the issue with respect to the impleadment of the proposed defendant.

13. In the Article 1969 extracted hereinabove, “brother” figures at Sr No.3 in line of succession. In that view of the matter, prima facie Mr. Vasant can be brought on record as legal representative of the deceased

Smt. Sitabai with liberty reserved in his favour to contest the issue whether or not he could be a legal representative. It would be open for him to contend before the Tribunal by leading evidence that he did not inherit any estate of the deceased and, therefore, he could not be termed as "legal representative" or that is liability cannot exceed more than the property inherited by him. It will also be open for him to disclose any other person other than himself inheriting property of the deceased Smt. Sitabai so that inheritor of the property of Smt. Sitabai could be fasten with the liability if claim petition is allowed. In the event of any such material being brought on record, the Tribunal would be duty bound to take cognizance of the said material and decide the issue in accordance with law on its own merits by a reasoned order.

14. In the above view of the matter, the impugned order dated 25th February, 2003 is set aside. Application for impleadment of Vasant as respondent No.2(a) is permitted, keeping all defences available to him open for being raised and canvassed before the Tribunal.

15. One more order is subject to challenge in this petition i.e. Order dated 27th November, 2003; whereby the petition filed under Section 140 of the M.V.Act came to be dismissed, relying on the earlier impugned order dated 25.0203. Since the said order dated 25.02.03 is being set

aside, the second order dated 27.11.03 based on that order is set aside, with the result original claim petition filed under section 140 of the M.V. Act stands restored to the file of the Tribunal. It is needless to mention that all adverse findings recorded by the Tribunal in the impugned order are also set aside. The Tribunal will be free to decide claim petition on merits in accordance with law.

16. In the result the petition is allowed. Rule is made absolute in terms of this order with no order as to costs.

V. C. DAGA, J.

sl.